

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:16-CR-238-FL-1

UNITED STATES OF AMERICA,

v.

JAMES NELSON DICKINSON

Defendant.

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ORDER

This matter is before the court on defendant's motion to suppress (DE 22). Pursuant to 28 U.S.C. § 636(b)(1), United States Magistrate Judge Kimberly A. Swank issued memorandum and recommendation ("M&R"), wherein it is recommended that the court deny defendant's motion. (DE 33). No objections have been filed. For the reasons that follow, the court adopts the recommendation of the magistrate judge as its own, and denies defendant's motion.

BACKGROUND

Indictment filed September 21, 2016, charges defendant with being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §§ 922(g) and 924(a). Defendant filed the instant motion on February 28, 2017, contending he was subjected to an unlawful warrantless automobile search and that evidence was seized in violation of the Fourth Amendment. The government filed a response in opposition, and the magistrate judge held an evidentiary hearing on May 24, 2017, to develop the record. Both parties then filed supplemental briefs.

STATEMENT OF FACTS

The court incorporates herein by reference the statement of facts in the M&R (see DE 33 at 2-10), where such statement accurately reflects the evidence of record.

COURT'S DISCUSSION

A. Standard of Review

The district court reviews de novo those portions of a magistrate judge's M&R to which specific objections are filed. 28 U.S.C. § 636(b). The court does not perform a de novo review where a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Absent a specific and timely filed objection, the court reviews only for "clear error," and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir.1983). Upon careful review of the record, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

B. Analysis

Upon careful review of the M&R and the record in this case, where no objections thereto have been raised, the court adopts the analysis and conclusions of the M&R as its own. The M&R thoroughly and cogently reviews the evidence and the law in this case bearing on issues raised by defendant.


Sheriff's deputy Benjamin Winstead had probable cause to effectuate a traffic stop on defendant's vehicle, where he observed defendant cross a double-yellow center line twice, in violation of N.C. Gen. Stat. § 20-146(d). See Whren v. United States, 517 U.S. 806, 810 (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). Sheriff's deputies also lawfully searched defendant's vehicle where defendant voluntarily and knowingly consented to the search.

See United States v. Buckner, 473 F.3d 551, 554 (4th Cir. 2007). Accordingly, defendant's motion to suppress evidence seized as a result of the search must be denied.

CONCLUSION

Based upon the foregoing, upon careful review of the M&R and the record, the court ADOPTS the recommendation of the magistrate judge as its own. Defendant's motion to suppress (DE 22) is DENIED.

SO ORDERED, this the 25th day of September, 2017.



LOUISE W. FLANAGAN
United States District Judge